Public Notice

US Army Corps of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Number: 200400279
Date: November 20, 2006
Comments Due: December 22, 2006

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) is evaluating a permit application to construct the Westlake Village project, which would result in impacts to approximately 5.3 acres of waters of the United States, including wetlands, in or adjacent to the Disappointment Slough. This notice is to inform interested parties of the proposed activity and to solicit comments. This notice may also be viewed at the Corps web site at http://www.spk.usace.army.mil/regulatory.html.

AUTHORITY: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and/or Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

APPLICANT: The Spanos Corporation, 10100 Trinity Parkway, 5th Floor, Stockton, California 95219-7242, 209-478-2200, ATTN: Jim Panagopoulos

LOCATION: The project site is located in the northern portion of the City of Stockton, south of Eight Mile Road, west of Interstate 5, in Township 2 North, Range 5 East, San Joaquin County, California, and can be seen on the Terminous USGS Topographic Quadrangle.

PROJECT DESCRIPTION: The applicant is proposing to construct a residential housing development. Based on the available information, the overall project purpose is to construct a large scale residential development with a variety of housing that may include integrated recreational amenities to serve the Stockton/Lodi area. The applicant believes there is a need to provide more residential housing to keep pace with growth in the Stockton area. The attached drawings provide additional project details.

The proposed project is a 683-acre lake-oriented residential development that includes a range of single family homes for a more upscale market segment. The project incorporates two interconnected lakes. Many of the residential lots front the lakes. The lakes are designed to function in stormwater retention and water quality treatment. The project incorporates public recreational facilities, commercial uses, parks and other open space areas. The project provides approximately one-third of the proposed residences to an active adult-oriented community.

The residential development program for the proposed project consists of 24 "Villages" of detached residential units. Seventeen of the villages, encompassing about 337 acres, will be conventional market-rate housing units with densities ranging from 3.5 and 8.0 units/acres. The remaining seven villages, encompassing about 129 acres, will comprise the active adult community. A minimum of 12 acres of the 466 acres designated as residential will be developed as village parks, ranging in size from approximately 0.5 to 1.5 acres. The higher and lower density development areas are intermixed throughout the project, allowing similar proximity and equal use of the many project amenities. Other

uses within the villages would include approximately 109 acres of roads and levees, 71 acres of lakes, 14 acres of public service facilities, and 23 acres of open space/recreation.

The project includes onsite stormwater management consisting of a 51-acre man-made lake system, pump station, and underground storm drains. All surface runoff will be collected and conveyed to the man-made lake system, which extends throughout the project area. The system will provide stormwater quality treatment, stormwater runoff storage and peak attenuation, and stormwater conveyance. The stormwater management system includes: internal underground drainage system to convey the 100-year runoff into the manmade lake system; sufficient storage volume for the entire 24-hour 100-year storm event without pumping; pump station sized to discharge the entire 100-year runoff volume within the lake within a 24-hour period; relocate the existing jurisdictional drainage ditches on the perimeter of the project boundary to an underground storm drain system in order to maintain pre-project storage volume for the offsite watershed; contain on-site flooding during larger storm events and prevent on-site stormwater from adversely affecting offsite runoff storage; provide a variety of stormwater treatments within the manmade lake system including aeration, biofilters, circulation, aeration, and constructed wetlands for nuisance flows; and provide nuisance/dry-weather flow pumps located in each outfall with specially designed outfall structures to prevent lake water from entering into the storm drains.

The initial development of the proposed project entails mass grading and dewatering the project site, including filling of jurisdictional waters; construction of the spine roads and lake facilities; installation of underground utilities within the spine road right-of-way, including stub-outs to serve future phases; dedication of right-of-way for widening Eight Mile Road along the project frontage in conformance with the Eight Mile Road Specific Plan; and construction of required improvements including pedestrian and vehicular access into the project site. Additional development will occur in phases responding to market demand and other economic factors as determined by the Master Developer or subsequent project developer. Subsequent project phasing will only occur upon the condition that infrastructure improvements necessary to adequately serve the users of the subsequent project phases proposed within the proposed project are either fully constructed and operational, or will be constructed concurrently as part of the development which they would serve.

The proposed project entails mass grading of the site, eliminating approximately 670 +/- acres of croplands, orchard, ruderal areas, and marsh habitat. The loss of approximately 5.3 acres of marsh habitat associated with the drainage ditches may directly impact the giant garter snake and western pond turtle. Wetland functions and values associated with the ditches, including wildlife habitat, stormwater conveyance and storage, groundwater recharge, and water quality improvement, would also be lost.

In addition, a small area of Disappointment Slough (0.02 acre) will be permanently impacted by construction of a new outfall structure for water pumped from the project site. This element of the project may directly affect Central Valley steelhead, Central Valley fall run/late fall run Chinook salmon, Delta smelt, and giant garter snake. Temporary impacts to about 0.10 acre of Disappointment Slough will also occur during construction of the outfall.

ADDITIONAL INFORMATION:

Environmental Setting. The proposed project site lies east of the San Joaquin River in an area of the Delta that has been reclaimed through construction of engineered earthen levees and pumping station to drain and maintain the island's water table low enough for farming. The site is located within a levee-protected area know as Bishop Tract, which is bounded by Telephone Cut on the north, Bishop Cut on the west, Disappointment Slough, Pixley Slough, and Bear Creek on the south, and I-5 on the

east. Flood control improvements initiated in the 1990s removed the project area from the 100-year floodplain as shown on flood insurance rate maps (FIRM); existing operations and maintenance assessments are in place against the properties and land.

The project site is essentially flat with very little topographic relief other than irrigation and drainage ditches that have been constructed on the site. The project lies within a regional watershed encompassing approximately 1,813 acres. **The site slopes towards the southwest from an elevation of 1 foot below sea level at the eastern boundary to 7 feet below sea level at the western boundary.** Drainage ditches transect the project site and collect runoff to discharge into Bishop Cut through an upgraded pump station. The site is underlain by low-organic silty and sandy clay soils. Ground water is present eight feet below the surface in the eastern areas and about four feet below the surface on the remainder of the site.

The major drainage ditches on the project site, comprise 5.3 acres, and Disappointment Slough have been determined by the Corps to be subject to jurisdiction under Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act. The smaller, temporary ditches were not determined to be jurisdictional by the Corps.

Alternatives. The applicant has provided information concerning project alternatives. Additional information concerning project alternatives is available from the applicant or their agent Rick Harlacher, LSA Associates, (916) 630-4600. Other alternatives may develop during the review process for this permit application. All reasonable project alternatives, in particular those which may be less damaging to the aquatic environment, will be considered.

The applicant has submitted a alternatives analysis to assist in evaluating compliance with Section 404(b)(1) guidelines. The analysis evaluates whether or not there exists a practicable alternative to the proposed project that would have less adverse impact on aquatic ecosystems without causing other significant adverse environmental consequences.

Cumulative Impacts. The applicant also provided information on the cumulative impacts to wetland and open water habitats as well as associated special status species. The area was defined to include similar aquatic habitats to those at and near the proposed project site. The area encompasses 377 square miles, consisting of the legal delta, both the primary and secondary zones.

Large-Scale Project. The size of a residential project is determined by a number of real estate and business considerations. These include the total acreage of the project site, the amount of developable land on the site, the market characteristics and demand within the project market area, the amount of competition (supply) within the market area, the financial wherewithal of the project proponent, and other financial considerations.

Residential Development with a Wide Range of Housing Products. A primary objective of the proposed project is to provide a wide range of products at various price points, including an active adult residential community, to attract individuals and families from a broad economic spectrum.

Integrated Recreational Amenities. The applicant proposes a variety of integrated open space and recreational amenities including public and semi-private lakes, bike and pedestrian trails, access to the Delta and marina facilities, public and private recreational facilities, a community center, and public and village parks.

Off-Site Alternatives. The number of practicable off-site locations is limited by the overall purpose of the project and the environmental, technological, logistic, and cost considerations of each alternative site. For the proposed project, a tiered methodology was developed based on practicability and consistency with the overall project purpose. The first tier of the review involves application of the overall project purpose in order to define the market area. Next, all potentially practicable alternatives within the market area are identified based on the initial screening criteria of availability and parcel size (Tier 2). Once potential alternatives are identified, costs, logistics, and technology considerations are applied to determine if there are any practicable alternatives available to the applicant (Tier 3). In the final tier (Tier 4) of the review, practicable alternatives are evaluated in detail to determine if they would result in less impact to waters of the United States, while not resulting in other adverse environmental effects.

On-Site Alternatives. The on-site analysis entailed identification and preliminary designs for three alternative site plans involving various reduced project footprints that avoid jurisdictional areas that would be impacted by the proposed project. The on-site alternatives were designed to be technically and logistically practicable based on project site geotechnical and land use constraints. The two on-site alternatives to the proposed project were tested for practicability based on the cost screening criterion. Under the cost analysis, site preparation and infrastructure development costs (i.e., grading, roads, water, sewer, storm drainage systems, engineering design costs, as well as City and Special District required impact fees) were estimated for each alternative. Based on this analysis process, all of the on-site alternatives, including the proposed project were determined to be practicable. Although both of the on-site alternatives reduce direct impacts to jurisdictional waters when compared with the proposed project, the avoided aquatic ecosystems will be subject to long-term indirect effects including impaired habitat functions and water quality degradation. Based on these considerations, neither of the avoidance alternatives results in substantially less impact to aquatic resources than the proposed project and neither is considered to be a less damaging practicable alternative to the proposed project.

Mitigation. The Corps requires that applicants consider and use all reasonable and practical measures to avoid and minimize impacts to aquatic resources. If the applicant is unable to avoid or minimize all impacts, the Corps may require compensatory mitigation. A detailed Mitigation and Monitoring Program (MMP) prepared according to Corp guidelines has been submitted by the applicant and is summarized below.

The overall goal of the mitigation program is to offset impacts to jurisdictional waters and other biological resources including special status species associated with jurisdictional waters. The primary mechanism for mitigation of impacts to biological resources, including special status species, is the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Mitigation for most of the special status species potentially occurring on the site can be accomplished through this program. The loss of habitat for these species is mitigated through payment of development fees. A fee of approximately $1,724 per acre has already been paid to San Joaquin Council of Governments (SJCOG).

The mitigation program presented in the MMP goes beyond the coverage of the SJMSCP by providing mitigation for impacts to wetland and non-wetland jurisdictional waters, and for impacts to non-covered species. The MMP incorporates three mitigation elements: 1) on-site restoration of intertidal shoreline habitat in Disappointment Slough temporarily impacted during outfall construction; 2) purchase of mitigation credits from an approved commercial mitigation bank; and 3) off-site compensation through creation/restoration of new wetlands, riparian habitat, and associated open water and upland habitats.

On-Site Restoration. Restore intertidal shoreline and marsh habitats temporarily impacted during construction of the outfall structure within Disappointment Slough, which involves the restoration and enhancement of approximately 0.10 acre of intertidal shoreline habitat that will be temporarily impacted during construction of the stormwater outfall structure in Disappointment Slough.

Bank Credits. Purchase mitigation credits as needed from the Kimball Island Bank adequate to offset permanent project impacts to Central Valley Steelhead resulting from construction of the outfall structure.

Off-Site Restoration. A total of about 58 acres of restoration at Shin Kee Tract is proposed for offsetting impacts to giant garter snake habitat. 7.95 acres of wetlands mitigation is incorporated into that total to offset impacts to 5.3 acres of waters. Restore tidal wetland habitat on Shin Kee Tract adjacent to the White Slough Wildlife Area to offset impacts to drainage ditches. An open channel will be created to allow free movement of water on and off of the site with the ebb and flow of the tides. An open channel design will provide the greatest biological value because fish and other aquatic organisms will be able to colonize the site and utilize restored habitats. It will also require the least amount of active management.
The goal for off-site restoration is to restore a wetland area of adequate size and function to offset impacts from the proposed project as well as projected impacts from other Spanos projects expected to come on line within the next 10 to 20 years.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Central Valley Regional Water Quality Control Board is required for this project. The applicant has indicated they have applied for certification. The project also requires authorization under Section 402 National Pollution Discharge Elimination System. The applicant indicates this project is covered under the City of Stockton's certification. The project requires authorization from the California Department of Fish and Game under Section 1602 of the State Fish and Game Code. The applicant has also applied for this authorization.

HISTORIC PROPERTIES: The Corps will initiate consultation with the State Historic Preservation Office under Section 106 of the National Historic Preservation Act, as appropriate.

A pedestrian field survey of the Westlake Villages project site was conducted by LSA archaeologists in 2003. The constituents of the site were found to be as previously reported by Napton and Greathouse. The following was observed at the site during field surveys: obsidian, chert, and quartzite flakes and tools; numerous pieces of heat-affected rock; burned bone; a few pieces of shellfish (possibly mussel); a piece of mica; charcoal; and a dark brown, sandy midden soil. One cultural resource was identified in the project area: a 1910's or 1920's historic farm site that was most likely established by George Shima. The site consists of the farm landscape, farm fields, main farm complex which include five structures, a pump house, pumping station, collapsed structure, levee, and irrigation ditches. Since the surveys were conducted, the farm site has been demolished.

A fossil locality search was conducted by the staff at the University of California Museum of Paleontology (UCMP), Berkeley, California, on June 19, 2003. There are no fossil localities located within or adjacent to the Westlake Villages project site; however, two vertebrate fossil localities are within five miles of the project site.

Consultation with the Native American Heritage Commission (NAHC) did not indicate the presence of Native American cultural resources in the immediate project area. A Native American representative indicated that the site is archaeologically sensitive. Consultation with the Haggin Museum indicated that a flexed burial site has been identified on the Shima Tract and any high areas on the project site could be burial grounds or occupation sites.

ENDANGERED SPECIES: The proposed activity may affect Federally-listed endangered or threatened species or their critical habitat. The Corps initiated consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, pursuant to Section 7 of the Endangered Species Act, as appropriate.

Special Status Species. A number of special status species are known from the project vicinity and could potentially occur on the project site based on availability of suitable habitat. The following fish and wildlife special status wildlife species were determined to potentially occur in the project area. Although these species may occur on the project site, the ongoing farming operations and maintenance activities effectively limit the suitability of the site for most special status species.

Central Valley Steelhead and Central Valley Fall Run/Late Fall Run Chinook Salmon. Disappointment Slough provides potential migration habitat for these species.

Delta Smelt. Delta smelt have been collected and observed from waterways within the delta system and suitable habitat exists in the Disappointment Slough.

Western Pond Turtle. Disappointment Slough and the drainage ditches provide potential habitat for pond turtles.

Giant Garter Snake. The sloughs surrounding the project site (i.e., Disappointment and Pixley Sloughs, and Bishop Cut) and on-site drainage ditches constitute potential habitat for giant garter snake.

ESSENTIAL FISH HABITAT: The proposed project will not adversely affect Essential Fish Habitat (EFH) as defined in the Magnuson-Stevens Fishery Conservation and Management Act. The National Marine Fisheries Service has determined that conservation measures included in the project description will reduce adverse effects to EFH for Pacific Salmon.

The above determinations are based on information provided by the applicant and our preliminary review.

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice 200400279, must be submitted to the office listed below on or before December 22, 2006:

William Guthrie, Project Manager
US Army Corps of Engineers, Sacramento District
Delta Office
1325 J Street, Room 1480
Sacramento, California 95814-2922
Email: William.H.Guthrie@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant's agent Rick Harlacher, LSA Associates, (916) 630-4600 or the Corps' project manager William Guthrie, 916-557-5269.

Attachments: 8 drawings